



House of Commons  
Select Committee on  
Statutory Instruments

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**First Report  
of Session 2013–14**

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**Drawing special attention to:**

*Air Passenger Duty (Amendment) Regulations 2013 (S.I. 2013/493)*

*Ordered by The House of Commons  
to be printed 5 June 2013*



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## Instrument reported

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At the Committee's meeting on 5 June 2013 it scrutinised a number of instruments. It was agreed that the special attention of the House of Commons should be drawn to one of those considered in accordance with Standing Orders. The Instrument and the ground for reporting it is given below. The relevant Departmental memorandum is published as an appendix to this report.

### S.I. 2013/493: Reported for defective drafting

*Air Passenger Duty (Amendment) Regulations 2013 (S.I. 2013/493)*

1.1 The Committee draws the special attention of the House to these Regulations on the ground that they are defectively drafted in one respect.

1.2 The Regulations amend the Air Passenger Duty Regulations 1994 (S.I. 1994/1738) ("the principal Regulations"). Regulation 3(b) inserts into regulation 2(1) of the principal Regulations a definition of "occasional operator". That term is defined as meaning "an operator who satisfies the Commissioners that, in any period of 12 months beginning on any day during which the operator uses for a flight a chargeable aircraft for the carriage of any chargeable passengers, the number of such flights will not exceed 12".

1.3 In the new paragraph (9) inserted into regulation 4 of the principal Regulations by regulation 4(b) circumstances are prescribed in which the Commissioners need not include in the register of operators an operator who has given notice of liability to be registered. One of those circumstances is that the operator is an occasional operator.

1.4 In the new regulation 10F inserted into the principal Regulations by regulation 6 an obligation to furnish a return and pay any duty due is imposed on an occasional operator, to be complied with not later than the seventh day after the end of each accounting period.

1.5 Having considered the definition of "occasional operator", and in particular the reference to a period of 12 months beginning on a flight day, the Committee wondered what period of 12 months is intended to be material in ascertaining whether an operator is an occasional operator for the purposes of regulations 4(9) and 10F of the principal Regulations and asked Her Majesty's Revenue and Customs to explain that and how effect is given to the intention.

1.6 In a memorandum printed as an Appendix, the Department states that the period of 12 months is intended to be a rolling period of 12 months beginning on each day an operator uses a chargeable aircraft for the carriage of any chargeable passengers, but there is nothing in the definition to make that clear.

1.7 In relation to regulation 4(9) of the principal Regulations, the memorandum indicates that an operator need not be registered "if he is an occasional operator (as defined)". The Committee does not understand that since the notion of occasional operator is tied to a 12 month period beginning with a day on which he uses an aircraft for a flight. How, when the Commissioners have to decide whether to include an operator in the register, will they

determine whether he is, at that time, an occasional operator within the meaning given by the definition?

1.8 In relation to regulation 10F of the principal Regulations the memorandum simply states that each day on which an occasional operator carries chargeable passengers on a chargeable aircraft is an accounting period. But presumably the issue whether a person is or is not an occasional operator falls to be determined when the obligations imposed by regulation 10F would otherwise arise. And how does one select the relevant 12 month period? What day on which the operator uses an aircraft for a flight is to be relevant?

1.9 The Committee concludes that the way in which the definition of “occasional operator” is tied to a flight day, and in particular the lack of specificity about chronology as between flight days and satisfaction of the Commissioners as mentioned in the definition, makes it impossible to ascertain confidently how regulations 4(9) and 10F of the principal Regulations work. It would not surprise the Committee if it were found that the definition needed to be linked to operative provisions that provided the necessary detail.

**1.10 The Committee accordingly reports regulation 3(b) for defective drafting.**

## Instruments not reported

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The Committee has considered the instruments set out in the Annex to this Report, none of which were required to be reported.

## Annex

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### Draft Instruments requiring affirmative approval

<b>Draft S.I.</b>	Small Charitable Donations Regulations 2013
<b>Draft S.I.</b>	Community Infrastructure Levy (Amendment) Regulations 2013
<b>Draft S.I.</b>	Asian Development Bank (Tenth Replenishment of the Asian Development Fund) Order 2013

### Instruments subject to annulment

<b>S.I. 2013/157</b>	Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) (Amendment) Regulations 2013
<b>S.I. 2013/267</b>	Individual Savings Account (Amendment) Regulations 2013
<b>S.I. 2013/412</b>	Value Added Tax (Refund of Tax to the Natural Resources Body for Wales) Order 2013
<b>S.I. 2013/417</b>	Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) (Amendment) Regulations 2013
<b>S.I. 2013/420</b>	Profits from Patents (EEA Rights) Order 2013
<b>S.I. 2013/430</b>	Value Added Tax (Reduced Rate) (Cable-Suspended Passenger Transport Systems) Order 2013
<b>S.I. 2013/463</b>	Tax Law Rewrite Acts (Amendment) Order 2013
<b>S.I. 2013/464</b>	Capital Allowances (First-year Tax Credits) Order 2013
<b>S.I. 2013/489</b>	Natural Resources Body for Wales (Tax Consequences) Order 2013
<b>S.I. 2013/490</b>	Fire Service College Trading Fund (Revocation) Order 2013
<b>S.I. 2013/505</b>	Climate Change Agreements (Eligible Facilities) (Miscellaneous Amendments) Regulations 2013
<b>S.I. 2013/508</b>	Climate Change Agreements (Administration) (Miscellaneous Amendments) Regulations 2013

<b>S.I. 2013/513</b>	Income Tax (Exempt Amount for Childcare Vouchers and for Employer Contracted Childcare) Order 2013
<b>S.I. 2013/521</b>	Income Tax (Pay as You Earn) (Amendment) Regulations 2013
<b>S.I. 2013/557</b>	Capital Gains Tax (Amendment) Regulations 2013
<b>S.I. 2013/601</b>	Value Added Tax (Independence Payment) Order 2013
<b>S.I. 2013/605</b>	Income Tax (Removal of Ordinary Residence) Regulations 2013
<b>S.I. 2013/620</b>	Income Tax (Construction Industry Scheme) (Amendment) Regulations 2013
<b>S.I. 2013/658</b>	Landfill Tax (Amendment) Regulations 2013
<b>S.I. 2013/659</b>	Value Added Tax (Consideration for Fuel Provided for Private Use) Order 2013
<b>S.I. 2013/660</b>	Value Added Tax (Increase of Registration Limits) Order 2013
<b>S.I. 2013/661</b>	Offshore Funds (Tax) (Amendment) Regulations 2013
<b>S.I. 2013/701</b>	Value Added Tax (Amendment) Regulations 2013



# Appendix

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## S.I. 2013/493: memorandum from HM Revenue and Customs

### *Air Passenger Duty (Amendment) Regulations 2013 (S.I. 2013/493)*

1. The Select Committee has requested a memorandum to be submitted on the following point-

*“Explain, in the light of the definition of “occasional operator” given by the definition inserted by regulation 3(b), what period of 12 months is intended to be material in ascertaining whether an operator is an “occasional operator” for the purposes of –*

- (a) paragraph (9) inserted by regulation 4(b), and*
- (b) regulation 10F inserted by regulation 6*

*and how effect is given to that intention.*

2. The definition of “occasional operator” inserted by regulation 3(b) provides-

*“occasional operator” means an operator who satisfies the Commissioners that, in any period of 12 months beginning on any day during which the operator uses for a flight a chargeable aircraft for the carriage of any chargeable passengers, the number of such flights will not exceed 12”.*

3. The period of 12 months is intended to be a rolling period beginning on each day an operator uses a chargeable aircraft for the carriage of any chargeable passengers. Consequently, each period of 12 months following a day on which an operator uses a chargeable aircraft for the carriage of a chargeable passenger is material for the purposes of paragraph (9) (inserted by regulation 4(b)) and regulation 10F (inserted by regulation 6).

4. Provided an operator can satisfy the Commissioners each time he uses for a flight a chargeable aircraft for the carriage of any chargeable passengers that the number of such flights in the period of 12 months next following that time will not exceed 12 the operator will be an “occasional operator” for the purposes of those provisions.

5. Paragraphs (8) and (9) (inserted by regulation 4(b)) are concerned with the circumstances when the Commissioners need not include in the register an operator who has given notice of liability to be registered. An operator who may be an “occasional operator” within the meaning of the definition inserted by regulation 3(b) will still have to give notice of liability to register each time he uses for a flight a chargeable aircraft for the carriage of any chargeable passengers. However, the Commissioners need not include the operator in the register if he is an occasional

operator (as defined) and they are satisfied that the operator's duty liability in the 12 month period referred to in paragraph (9) (i.e. 12 months beginning on the date on which notice of liability to register is given) will not exceed £5000.

6. Where an operator is an occasional operator, regulation 10F (inserted by regulation 6) provides for the returns and payments that have to be made and, for these purposes, each day on which an occasional operator carries chargeable passengers on a chargeable aircraft is a separate accounting period.

**HM Revenue and Customs**

**2 May 2013**